

SUPPLEMENTAL DECLARATION OF KENNETH L. WILSON

and network planning team at Bell Labs for AT&T's long distance service. From 1983 through 1985, I was a member of the first AT&T Bell Labs cellular terminal design team. From 1986 through 1992, I led a Bell Labs group responsible for network performance planning and assurance for AT&T Business Markets. From 1992 through 1993, I was a team leader on a project to reduce AT&T's capital budget for network infrastructure.

3. From January 1994 through May 1995, I led a team at Bell Labs investigating the various network infrastructure alternatives for entering the local telecommunications market. From 1995 through the spring of 1998, I was the Business Management Director for AT&T in Denver, managing one of the groups responsible for getting AT&T into the local market in Qwest's 14-state territory. In addition, I was also the senior technical manager in Denver working on local network and interconnection planning, OSS interface architectures and the technical aspects of product delivery.

4. As noted above, I am currently a consultant and technical witness with Boulder Telecommunications Consultants, LLC. In this capacity, I have worked with several companies, including AT&T, on all aspects of interconnection, unbundled elements, collocation and resale issues, among other things. I was the lead technical witness for AT&T in the section 271 workshops in Qwest's region. In this capacity, I attended a total of 41 multi-day Qwest 271 workshop sessions. My C.V. is attached hereto as Exhibit 1.

5. I am qualified to analyze the secret agreements that Qwest engaged in with various CLECs over the past three years because of my familiarity with the Qwest SGAT and its development, the checklist item workshops, and the performance and testing process sponsored by the ROC.

I. PURPOSE AND SUMMARY.

6. The purpose of my testimony is to demonstrate that (1) Qwest has not disclose all of the secret interconnection agreements that are currently in effect in the five states for which Qwest is seeking Section 271 approval; (2) many of these secret agreements included gag provisions that barred Qwest's secret deal partners from criticizing Qwest's interconnection performance in state and federal Section 271 proceedings, and the absence of those secret deal partners had a substantial impact on those proceedings; and (3) the special terms provided to Qwest's secret deal partners substantially skewed the results of the third party tests of Qwest's operations support systems.

II. QWEST HAS FAILED TO MAKE ALL OF ITS SECRET DEALS AVAILABLE FOR REVIEW.

7. I understand that Qwest has agreed to make all of its secret deals that exist in the five states covered by its Application available for review by the Commission and competitive local exchange carriers ("CLECs") by posting those secret deals on its Internet website. My review of the secret deals that Qwest has posted on its website confirms that Qwest has not done so. Qwest's website contains twelve (12) separate interconnection agreements (Qwest creates the impression that it has posted more than 12 agreements by posting multi-state agreements separately for each state in which those agreements are in effect). By contrast, the current active investigations into Qwest's secret deals (by three separate state commissions in Arizona, Iowa and Minnesota, and by Qwest's admissions in FCC ex parte filings) confirm that at least 110 separate arrangements between Qwest and various CLECs are available for review – some publicly available, but the majority available only through an agreement to review the documents confidentially under seal. Based on my review of the public arrangements, I have determined that many of them are interconnection agreements that relate to the states in Qwest's pending

five-state Section 271 application. Thus, Qwest has not come close to disclosing all of the relevant interconnection agreements.

8. Unfortunately, approximately 75% of CLEC-Qwest contracts are available for review are subject to restrictive protective orders.¹ Qwest finally agreed today (on the day this filing is due) that it would consent to AT&T disclosing to this Commission the agreements that are subject to the state protective orders, but only if AT&T first obtains express consent from the other party to the agreement in question. AT&T is in the process of contacting those other parties to obtain consent to present these secret deals. So far, AT&T has obtained consent from Eschelon to show this Commission one of the secret deal arrangements that it entered with Qwest, which would otherwise be protected Qwest's restrictive state protective orders. That agreement plainly is in effect in the relevant states, and contains very favorable terms for Eschelon.

9. In particular, on March 19, 2001, Eschelon entered into an agreement with Qwest entitled "Confidential Second Amendment To Confidential/Trade Secret Stipulation" (attached hereto as Exhibit 2). This agreement contains a highly discriminatory provision that allows Eschelon to avoid true-ups on resale products before March 1, 2001. As a result of this term, Eschelon avoided substantial resale true-up payments in Minnesota. If these contracts had been properly filed, other CLECs could have used portions of this agreement, and potentially could have (or still could) receive a refund on payments they made to Qwest for resale true-ups in Minnesota. The secret deal also contains provisions that CLECs could have used to avoid true-

¹ By filing most of its arrangements with state commissions subject to restrictive protective orders, Qwest ensures that CLEC personnel who obtain access to those agreements are unable to use that information to opt into any favorable terms in those agreements pursuant to the Commission's pick-and-choose rules, because the protective orders do not permit CLEC personnel that review those agreements to divulge the content of those agreements to third parties.

ups for collocation, UNEs and EICT charges in Minnesota. In addition, CLECs could have avoided true-ups for platform billing in any state prior to March 1, 2001.

10. Although numerous other secret deals are currently covered by protective orders, the staff of the Arizona Corporation Commission (“ACC”) has determined that 28 of those confidential secret agreements should have been filed in Arizona as interconnection agreements. And I have identified sixteen (16) additional agreements that I believe should have been filed in Arizona as interconnection agreements, and should be required to be filed by the ACC Staff as they complete their review process. I also can confirm that many of the agreements available for review in Arizona and other state proceedings are effective in the states for which Qwest currently is seeking Section 271 approval, including Colorado, Idaho, Iowa, Nebraska and North Dakota.

III. THE HANDFUL OF SECRET AGREEMENTS THAT QWEST HAS PUBLICLY DISCLOSED ARE GROSSLY DISCRIMINATORY.

11. Twenty six (26) of the 110 known Qwest unfiled deals are not subject to protective orders. I have confirmed that twenty one (21) of those agreements are “interconnection” agreements that are effective in the states where Qwest is currently seeking Section 271 relief, and that those agreements provide Qwest’s secret deal partners with better terms than Qwest makes available to other CLECs.² Qwest has filed 12 of these interconnection agreements on its website. I have attached the remaining 9 of those agreements to this declaration, and I describe those agreements below.

² My conclusions are based on what was available to non-secret-deal CLECs in state SGATs, the ROC defined Direct Measures of Quality (DMOQs) when the agreements were signed, and what is available in Qwest’s SGATs and DMOQs today.

12. Before describing the non-confidential secret deal interconnection agreements that Qwest has not made available to this Commission, it is important to note that my review of these documents is still ongoing. I have worked diligently to confirm that my analysis is fully accurate, and I will update the Commission to the extent that I discover that additional secret agreements Qwest should have made available to this Commission, that any particular agreement that I discuss below is no longer in effect, or that an agreement is not applicable in the relevant states.

13. In addition, I am certain that Qwest may offer numerous reasons purporting to explain why it did not file these agreements. To the extent that time in this proceeding allows, I will update my analysis to respond to Qwest's claims.

14. *McLeod Secret Deals* (Exhibit 3). Qwest and McLeod entered into interconnection-related secret deals. For example, on April 25th, 2000, McLeod and Qwest entered into a secret deals entitled "Confidential Settlement Document." In exchange for dropping its opposition to the Qwest/US West merger, McLeod received several very special interconnection related terms that were not made available to other CLECs. First, the agreement allows McLeod to choose the lower of a low fixed price specified in the agreement or the price established by the 271 cost docket for subscriber list information. Second, the agreement allows McLeod to use a bill and keep arrangement for all interconnection traffic. Third, the agreement provides McLeod the broad and sweeping right to use interim prices for resale and UNE products in all 14 states through December 31, 2001, with the guarantee that final state-dictated prices will only be used prospectively and not retroactively. Finally, the agreement allows for the extension of McLeod Centrex Service Agreements through December 31, 2002.

15. *SBC Secret Deals Agreements* (Exhibit 4). Qwest and SBC Telecom, Inc. (“SBCT”) entered into a secret deal in exchange for SBCT dropping opposition to the Qwest merger with US West. Attached to this secret deal are a number of interconnection-related line sharing provisions that have not been made available to other CLECs. For example, there are numerous terms and conditions for establishing rates for line sharing, including a provision that guarantees that SBCT will be given the same rates for line sharing as any separate subsidiary that Qwest may establish. Though this provision says that the rates will be offered to other carriers, no language was produced by Qwest for any state SGAT containing such terms. The agreement also grants SBCT a novel opt-in clause that requires Qwest to give SBCT any contract language that is given to any other CLEC as a result of settlement agreements in any Qwest state. Qwest has not offered a similar provision to other CLECs. This agreement appears to still be in effect.

16. *Other Small CLEC Secret Deals* (Exhibit 5). On April 18th, 2000, a group of CLECs entered into an agreement with Qwest titled “Confidential Stipulation Between Small CLECs and US West.” In exchange for dropping their opposition to the Qwest/US West Merger, these group of CLECs received special treatment relating to a number of interconnection issues. First, Qwest waived charges for T1 connectivity to Qwest computer centers in Denver or Omaha to access Qwest IMA and to receive billing and usage data. Other carriers still pay large substantial fees for such connectivity. Second, the agreement allows these secret deal CLECs to adopt the terms of any effective interconnection agreements voluntarily negotiated and entered into by US West and any CLEC in any other state in US West’s operating territory, rather than just the state to which the requested agreement applies. Qwest actively has fought similar provisions in every state workshop and has not given such broad rights to other CLECs. This agreement appears to still be in effect.

17. *Eschelon Secret Deals* (Exhibits 6-11). Over the past few years, Qwest entered into a series of secret deals with Eschelon. Although some of these deals have either expired, or have been unilaterally terminated by Qwest, some of these secret deals that Qwest has not posted for review continue to be in effect. These secret deals provide Eschelon with special interconnection-related benefits in Colorado, Idaho, Iowa, Nebraska or North Dakota that were never made available to non-secret deal CLECs.

18. For example, on July 31, 2001, Qwest entered into a secret agreement with Eschelon that provided Eschelon with a number of unique provisions that were not available to other CLECs. The agreement provides Eschelon with special access to Qwest personnel for the purpose of addressing interconnection problems that might arise. Specifically, the agreement includes an eight page attachment called “Eschelon Escalation Tier Contact Information,” which contains detailed information on specific Qwest personnel, as well as phone and pager numbers to call for every type of foreseeable interconnection problem that Eschelon might encounter. In effect, Eschelon has direct access to the Qwest operations centers for solving interconnection-related problems.

19. Eschelon (a.k.a. Advanced Telecommunications Inc. (“ATI”)) also entered into a secret deal with Qwest entitled “Confidential/Trade Secret Stipulation Between ATI and US WEST,” and dated February 28, 2000. This agreement contains several important interconnection-related provisions that were unavailable to other CLECs.

20. First, Qwest agreed to implement special Direct Measures of Quality (“DMOQs”) for Eschelon and to provide Eschelon with customized performance measures called “Service Performance Measures” (SPMs). The SPMs are designed to provide minimum performance

standards for the DMOQs. Qwest does not offer or notify other CLECs that specialized performance metrics with custom thresholds are available. AT&T and other CLECs would have been (and still are) interested in metrics customized for their business, and would have welcomed a similar offer.

21. Second, Qwest offered ATI/Eschelon a special deal on reciprocal compensation for internet traffic. The statement reads: “the parties agree for settlement purposes that reciprocal compensation for terminating Internet Traffic shall be paid at the most favorable rates and terms contained in an agreement executed to date by USWC.” This provision was given to ATI/Eschelon at a time when Qwest was refusing to pay any reciprocal compensation for ISP traffic to many other CLECs. This provision appears to apply to 14 USWC states. Based on my experience working with AT&T and other CLECs, I have no doubt that AT&T and other CLECs would have been delighted to have this same provision included in their interconnection agreements with Qwest.

22. Third, Qwest agreed to waive Termination liability assessments (“TLAs”) for the migration of Qwest customers to ATI/Eschelon in Minnesota. This provision was not available to other CLECs and, in fact, Qwest was fighting to maintain every state TLA on migrations of all kinds in Section 271 workshops.

23. Fourth, Qwest committed to a dedicated provisioning team for ATI/Eschelon, including the assignment of a full time Qwest employee as an on-site “Coach” for a period of at least six months. This coach specified by name was to help ATI/Eschelon full-time with ordering and provisioning problems with Qwest services. This type of arrangement was never

offered or made known to other CLECs. AT&T and other CLECs would have benefited from similar terms and conditions.

24. *Other Types of Agreements* (Exhibit 12): A recent investigation and complaint proceeding initiated by the Minnesota Department of Commerce (“MDC”) shows that there also exist agreements that do not appear to be “interconnection agreements” on their face, but in fact are interconnection contracts. For example, a recent investigation by the Minnesota Department of Commerce (“MDC”) demonstrates that Qwest entered into a secret interconnection agreement with McLeodUSA, Inc. (“McLeod”) that was specifically designed to circumvent the Sections 251 and 252 of the 1996 Act. In particular, prior to October 2000 Qwest and McLeod entered into negotiations relating to, among other things, the price that McLeod pay would to Qwest for a new UNE-P product called “UNE Star.”³ The parties reached an agreement that effectively would provide McLeod with a ten (10) percent discount from the price that Qwest charges to other carriers for the same UNEs. However, Qwest did not want put that agreement in writing in the interconnection agreement because, according Qwest, it was “concerned that other CLECs might feel entitled to the same discount if the agreement were written and made public.” *Id.* at 9. Qwest instead offered to enter into an “oral” contract that would provide McLeod with the same discount. *Id.*

25. Not surprisingly, McLeod expressed concern about the enforceability of such an oral contract. To address those concerns Qwest proposed an alternative scheme that would effectively provide McLeod with the ten percent discounts without including such terms in an official interconnection agreement. *See Id.* In particular, Qwest agreed to enter into a written

“take or pay” arrangement with McLeod, whereby Qwest agreed to purchase a set amount of goods from McLeod, and if Qwest did not purchase that set amount, Qwest would still pay the difference to McLeod equal to the amount that Qwest actually purchased and the amount that that Qwest promised to purchase. *Id.* That difference, not surprisingly, always amounted to about 10 percent of the UNE revenues that Qwest earned from McLeod. *See id.* In this way, Qwest provided McLeod with a 10 percent discount for UNEs purchased from CLECs, without including those terms in the interconnection discounts available to other carriers. Qwest has not made this secret deal available to the Commission.

26. As noted above, the secret interconnection agreements described above, which Qwest has not provided to this Commission, are only the tip of the iceberg. State commissions continue to investigate over a hundred Qwest arrangements to determine how many of these agreements are interconnection agreements that Qwest should have filed with state commissions. I have attached a list of agreements that was compiled by Arizona commission staff as Exhibit 13. This list, containing ninety one (91) agreements is almost complete, lacking only some state specific agreements in other states.

IV. QWEST’S SECRET DEALS PURCHASED THE SILENCE OF CLECS AND INTERFERED WITH THE FUNCTION OF STATE WORKSHOP PROCEEDINGS.

27. Many states in Qwest’s region held workshops that allowed regulators and industry participants to work together and develop appropriate interconnection and other telecommunications-related terms. The outcome of those workshops is based on the contribution and participation of all CLECs that have (or will have) business relationships with Qwest. Full

³ *Complaint of the Minnesota Department of Commerce Against Qwest Corporation Regarding Unfiled Agreements*, Supplemental Testimony of W. Clay Deanhardt (Department of Commerce Witness), MPUC Docket No. P-421/C-

participation by CLECs in the workshops in Qwest's region was especially important because no single CLEC used all the local products. By purchasing the silence or nonparticipation of CLECs with unique experiences in UNE-based market entry, Qwest deprived the UNE workshops and associated metrics of vital input on issues and problems relating to Qwest products.

28. Qwest assured itself of favorable results in those workshops by conditioning a significant number of its secret deal arrangements on CLEC silence on certain issues in these workshops. For example, the first workshop on unbundled elements in the Qwest region was held in October of 2000 in Arizona. Eschelon sent two employees to that workshop. They were knowledgeable and vocal about the problems Eschelon had been having with Qwest's UNE-P products. Eschelon was the only CLEC in the workshop that had been attempting to use UNE-P to serve customers. Eschelon described numerous problems with Qwest's provisioning of UNE-P: for example, customers would lose features, experience delays of days and weeks in getting service, and in some cases experience disconnection when switching service to Eschelon. Qwest's experts in the workshop tried to respond to the problems identified by Eschelon with suggestions as to how to avoid those problems, but Eschelon explained that it had tried the suggestions offered by Qwest, and that they did not help. Eschelon concluded in that workshop that Qwest did not have a UNE-P product that was ready for use with customers.

29. No issues were resolved in that Arizona workshop. The expectations of the interested parties at that time were that those issues would be revisited in the upcoming Colorado workshop and Multistate workshops and proceedings. The lead Eschelon employee who

02-197 *et al.* (July 24, 2002) (attached hereto as Exhibit 11).

attended the Arizona meetings indicated to me that she planned to attend the Colorado workshops as well as those for the Multi-state proceedings.

30. All interested parties were surprised when Eschelon did not attend the Colorado workshop to follow-up on the concerns raised in the Arizona proceeding. No other CLEC at that time had tried to order UNE-P, so there was little or no rebuttal to Qwest's contention that the problems with the product had been solved. When AT&T asked Qwest about the issues that Eschelon had raised in Arizona, Qwest said that the issues had been resolved. Eschelon also was also absent from the second Arizona workshop.

31. I phoned the lead Eschelon employee to inquire about her absence at the meetings. She told me that Eschelon would not participate in any Section 271 workshops and that she could not tell me why. Open issues in the Arizona proceeding associated with the UNE-P problems Eschelon identified were either dropped (because Eschelon was not present) or closed as resolved when Qwest maintained that the problems had been fixed. No CLEC could challenge Qwest's statements concerning the ordering and provisioning of UNE-P because no CLEC other than Eschelon had experience in ordering and provisioning of UNE-P in commercial volumes.

32. As later became apparent, Qwest, instead of fixing the problems, simply fixed Eschelon. On November 15, 2000, Eschelon signed a Confidential Agreement and a Confidential Amendment to Confidential/Trade Secret Stipulation. See Exhibits 14 & 15. These secret agreements called for Qwest to pay Eschelon a \$10,000,000 up-front consulting fee, and Eschelon to purchase \$15,000,000 in Qwest services over a one year period. In essence, the secret deal provided Eschelon with a 66% discount on resale and UNE-P service. In return,

Eschelon agreed to not oppose Qwest's attempts to gain section 271 approval: "Eschelon agrees to not oppose Qwest's efforts regarding Section 271 approval or to file complaints before any regulatory body concerning issues arising out of the Parties' Interconnection Agreements." The agreements were also designed "to resolve differences which existed between the Parties ... including differences relating to service quality." In essence, the agreements compensated Eschelon for Qwest's failure to provide UNE-P and served as a discount for Eschelon's UNE-P offering, while at the same time preventing Eschelon from testifying in 271 workshops to that fact. At the same time, Qwest claimed in 271 workshops during the fall and winter of 2000 that their UNE-P product was fully operational and available.

33. Qwest bought McLeod's silence in the same way. McLeod was an active participant in many of the first Section 271 workshops in the Qwest region. McLeod started as a reseller of Qwest products, but was branching out into facilities based service and UNE-P. In some of the workshops where McLeod participated, the CLEC complained about problems with access to poles, ducts and Rights of Way, as well as issues relating to resale. In a workshop in Washington on interconnection, I noticed that the McLeod representative was clearly upset with some of the representations Qwest was making, but was not speaking up about the issues. At a break I asked the McLeod employees what was going on. They told me that they were only in the workshop as an observer and they were not allowed to raise issues. One McLeod employee told me that McLeod had many concerns relating to the topics that were being discussed, but that McLeod could not talk about those concerns, and could not talk about why they were forbidden to discuss those concerns.

34. I observed a similar pattern with SunWest, a small CLEC in Colorado. SunWest got its start by building the telecommunications infrastructure for a very large subdivision in the

Colorado Springs area. SunWest installed its own switch unsuccessful efforts to obtain switching from Qwest UNE for SunWest's loop infrastructure. Despite its problems obtaining interconnection with Qwest, SunWest wanted to expand its business with UNE loops and UNE-P. SunWest sent four representatives to the first Colorado loop workshop. These representatives gave a presentation at that workshop that lasted several hours, and explained, in great detail, the tremendous problems SunWest and its customers experienced trying to use Qwest's unbundled loops. According to SunWest's representatives, the company was experiencing months of delays in the provisioning of its orders by Qwest. When the orders finally were provisioned, many customers lost all service—sometimes for weeks.

35. Several months later SunWest attended the follow-up loop workshop in Colorado. I spoke with the SunWest representatives, who were in the process of filing complaints at the state and federal level against Qwest for failing to meet SunWest's needs for unbundled loops. During the workshop Qwest tried to close a deal with SunWest to prevent its representatives from testifying in the workshop. SunWest was on the phone with Qwest representatives at breaks and during lunch periods negotiating a deal. The problems caused by Qwest had driven SunWest to the verge of bankruptcy, and the company appeared desperate for some monetary compensation from Qwest. At the eleventh hour, Qwest and SunWest came to terms. The SunWest representatives literally left the workshop after a break, shortly before they were scheduled to testify. Qwest stated to the workshop organizers and other participants that SunWest decided not to testify, and that the companies would work out their differences business to business. Qwest was asked to produce its agreement with SunWest, but declined to do so. There is no record of what happened to the issues raised by SunWest in the provisioning of unbundled loops. One of the biggest problems was Qwest's inability to provision unbundled

loops when the loops were being provisioned over Integrated Digital Loop Carrier (IDLC). Qwest maintained that it had fixed the provisioning problems, but the company that could have attested to that fact had withdrawn from the proceedings.

36. The exit of Eschelon, McLeod and SunWest from the Qwest Section 271 workshop process damaged the records in all jurisdictions. When issues were raised in the workshop in one jurisdiction, they were pursued not only in follow-up workshops in that jurisdiction, but also in other jurisdictions. In addition, impasse issues and resolutions were ported from one jurisdiction to another to save time. Issues were ported from workshop to workshop for interconnection trunking, collocation, loops, emerging services, UNEs and all aspects of the checklist items. By procuring the silence of three CLECs raised, Qwest effectively removed the CLECs' issues from investigation in any of the workshops.

37. I am aware of other CLECs that struck secret agreements with Qwest, but I have not been able to evaluate their agreements to see if Qwest bought their silence, and prematurely terminated the investigative process, in those workshops as well.

38. The secret agreements had impacts on the state workshops beyond limiting CLEC participation. The terms and conditions of the secret agreements, had they been known during the state workshops, would have led to issues and discussions in the ordinary course that were missing from the workshops because the agreements were unknown to the participants. If CLECs excluded from the secret deals had known of their terms, the disfavored CLECs would have demanded similar terms and conditions. AT&T, for one, would have proposed additional SGAT language to incorporate those terms and conditions. If Qwest had refused to include the secret deal terms and conditions in their SGAT, the issues would have gone to impasse in the

various states. The states would then have been required to rule on the issues and could have come to different conclusions regarding the viability of Qwest's petition for 271-approval.

39. For example, if AT&T had known that it was possible to obtain a detailed list from Qwest of Qwest work center phone numbers for each specific ordering and provisioning task, with the duty pager for the manager in charge, AT&T would have requested that the information be placed in the SGAT as an attachment. Alternatively, we would have put language in the SGAT requiring Qwest to provide such information on a regular basis, updating it as it changed, to each CLEC that signed the agreement. If Qwest had refused to provide this information, the issue would have gone to impasse and the state commission could have ruled that Qwest was discriminating by not providing such information to all CLECs instead of one CLEC.

40. Listed below is a partial set of issues from the few agreements that I have been able to review. Each of these issues, if it had been known by all the parties in the state workshops, likely would have been requested to be included in the SGAT. The issues would have been individually debated and each could have gone to impasse in each state proceeding. From the agreements I have reviewed these issues include Bill and Keep for all interconnection traffic,⁴ DMOQs with performance credits before the ROC process was complete,⁵ Qwest employees on CLEC premises to help facilitate ordering and provisioning,⁶ specialized

⁴ Alltel; Confidential Billing Settlement Agreement, 4/19/02. McLeodUSA; Confidential Settlement Document: US West/Qwest Merger, 4/25/00.

⁵ Eschelon (ATI); Confidential/Trade Secret Stipulation and Agreement, 2/28/00.

⁶ Eschelon; Trial Agreement, 5/1/00.

escalation processes with named individuals at each level,⁷ customized trouble reporting,⁸ special provisioning guarantees,⁹ payments for DUF inaccuracies,¹⁰ payments to CLECs for consulting services to help Qwest identify problems,¹¹ special audits for discrepancies in access minute data,¹² special calculations and rates for interconnection costs,¹³ reimbursements for failure to convert private line to EEL,¹⁴ special evaluation of facility availability,¹⁵ UNE-P* as a product alternative to UNE-P.¹⁶

V. QWEST'S COMMERCIAL PERFORMANCE MEASUREMENTS AND OTHER STATISTICS HAVE BEEN SKEWED BY DATA FROM QWEST'S SECRET DEALS PARTNERS.

41. I have reviewed the KPMG report on the testing of Qwest's ability to take orders and provision them. KPMG's evaluation included data and information from CLECs who had secret agreements with Qwest. From my analysis of the secret provisions and special treatment that these CLECs received from Qwest, there is no doubt that the KPMG evaluation was based on tainted data.

42. The ROC OSS test required KPMG Consulting to test Qwest's ability to provide resold and UNE-P services to CLECs when the installation required the dispatch of a Qwest

⁷ Eschelon; Confidential Agreement, 11/15/00. MCI WorldCom; Business Escalation Agreement, 6/29/01. McLeodUSA; Escalation procedures and business solutions, 10/26/00.

⁸ Eschelon, 5/1/00.

⁹ Covad; Service Level Agreement Unbundled Loop Services, 4/19/00.

¹⁰ Eschelon; Confidential Amendment to Confidential Trade Secret Stipulation, 11/15/00.

¹¹ *Id.*

¹² Eschelon; Status of Switched Access Minute Reporting, 7/3/01.

¹³ Eschelon; Implementation Plan, 7/31/01. MCIWorldCom; Confidential Billing Settlement Agreement, 6/29/01.

¹⁴ MCIWorldCom, 6/29/01

¹⁵ McLeod; Confidential Settlement Agreement, 5/1/00.

¹⁶ Eschelon; Settlement Agreement, 3/1/02. McLeod, Secret oral agreement.

technician.¹⁷ For various reasons, KPMG Consulting executed the dispatch-related tests visiting the ordering centers of operating CLECs, observing CLEC representatives as they placed orders and recording various order-related information throughout the life-cycle of the order.

43. KPMG has acknowledged that some of the findings and conclusions in its Final Report were based, in whole or in part, on representations, information, or data obtained from CLECs that made secret agreements with Qwest. In a report issued May 7, 2002, KPMG listed specific tests on which it had relied, either substantially or in part, on input from three CLECs who had made such agreements. These tests covered every OSS function, from pre-ordering to maintenance and repair.¹⁸ On June 11, 2002, KPMG issued an updated report, acknowledging that it had not audited the data that it had obtained from the three CLECs for accuracy and completeness. KPMG also acknowledged in its updated report that it had not attempted “to investigate whether or not the information provided by one of the participating CLECs was consistent with information held by other CLECs.”¹⁹ KPMG has subsequently admitted that it has not reviewed any of the unfilled agreements.²⁰ Thus, KPMG performed its analysis with no understanding of the terms of the agreements or their possible impact on the test results.

44. On June 17, 2002, AT&T requested that KPMG review the unfilled agreements and analyze what impact those agreements may have had on the results and information it

¹⁷ See Qwest OSS Evaluation Project, Master Test Plan, Revised Release, Version 5.2, April 9, 2002, at 61 – 63 and Appendix K.

¹⁸ See KPMG report dated May 7, 2002 (attached hereto as Attachment 2). KPMG stated that it was making “no assertion as to the accuracy or completeness of the information provided by the three CLECs” in question. *Id.*

¹⁹ Updated KPMG report dated June 11, 2002 (attached hereto as Attachment 3). However, in proceedings before the Colorado PUC, KPMG acknowledged that in some of the tests where it had placed “substantial reliance “on input from three CLECs that made secret agreements with Qwest, KPMG’s reliance on these CLECs was “100 percent.” CPUC June 10 transcript at 176-177.

²⁰ CPUC June 10 transcript at 178, 200.

obtained from the CLECs with such agreements. AT&T attached to its request the recent recommendation of the staff of the Arizona Corporation Commission that the ACC fine Qwest over \$100,000 for its legal violations in failing to file the agreements (the parties to which were identified in the ACC Staff's recommendation). However, after discussions with the ROC Steering Committee, KPMG replied that it saw no reason for further analysis of the issue. AT&T then appealed to the ROC Executive Committee, which denied the appeal on June 27, 2002.²¹ As one of the factors in its decision, the Executive Committee stated that "the publicly available information provides parties with a sufficient record to make whatever advocacy arguments they deem appropriate."²² In view of the refusal of KPMG or the ROC Executive Committee to investigate the actual extent to which the results of the KPMG test were affected by the participation of CLECs who received preferential treatment under their secret agreements with Qwest, the findings of the test cannot be considered reliable to the extent that KPMG concluded that Qwest has satisfied its evaluation criteria.

45. KPMG Consulting has admitted that "practically 100% of the resale UNE-P observations came from one of the CLECs [with secret interconnection agreements]."²³ KPMG's conclusions that Qwest had satisfied dispatch-related evaluation criteria was based on observations at CLECs that may have received preferential treatment from Qwest.²⁴ Therefore, KPMG Consulting reached those conclusions based on performance results that may have been

²¹ Copies of the relevant correspondence regarding AT&T's request to KPMG, and AT&T's appeal to the ROC Executive Committee, are attached hereto as Attachments 4 and 5, respectively.

²² Executive Committee Decision on Impasse Appeal Regarding KPMG Consulting's Further Evaluation of CLECs with Unfiled Agreements, dated June 28, 2002 (attached hereto as Attachment 6).

²³ See transcript of proceedings held June 5, 2002 in Washington Docket No. UT-003022, p. 08080.

²⁴ See Qwest Communications OSS Evaluation, Final Report, Version 2.0, May 28, 2002, Criteria 14-1-21, Qwest meets the performance benchmark for PID OP-4A, B, D, & E – Installation Interval for All Products at 190, 14-1-25 Qwest meets the parity performance requirements for PID OP-3A, B, D, & E – Installation Commitments Met for

superior than would have been available to a CLEC that did lack similarly preferential treatment from Qwest. As a result, the conclusions that KPMG Consulting reached using data and information obtained from CLECs with unfiled agreements with Qwest cannot be relied upon.

46. As part of the review of the unfiled agreements, it was discovered that Qwest was providing to Eschelon and McLeod, a product called at various times UNE-E, UNE-M or UNE-P*. UNE-P* was developed by Qwest in response to its inability to provision UNE-P services to Eschelon and McLeod. Eschelon and McLeod were amongst the very first CLECs that ordered UNE-P services. It was Eschelon's experience that Qwest had great difficulty providing UNE-P services. Customers that had changed their service from Qwest to an Eschelon UNE-P based service were often losing features (and sometimes losing dialtone altogether) because Qwest's processes were not adequate to the task.

47. As a response to its UNE-P failures, Qwest developed what it called the UNE-P* service. UNE-P* is essentially resold POTS. Qwest had better success in providing resold service to CLEC customers than it did in providing UNE-P. Qwest instructed Eschelon and McLeod to order the UNE-P* service. From a provisioning perspective, Qwest provisioned a resold POTS service to those Eschelon and McLeod customers. After a UNE-P* service was provisioned, Eschelon and McLeod would be billed the resold rates for service and a discount was to be applied to reduce the resale rate to a UNE-P rate. Since UNE-P* was essentially a resold POTS service, Qwest was unable to provide Eschelon and McLeod with the originating and terminating access information that they would need to bill access charges to long distance

All Products at 191, and 14-1-27 Qwest meets the parity performance requirements for PID op-4A, B, D, & E – Installation Interval for All Products at 192.

providers. As a work-around, Qwest would provide Eschelon and McLeod with monthly credits for the estimated revenue that Eschelon and McLeod would have obtained from billing long distance providers with originating and terminating switched access.

48. That Eschelon and McLeod were actually ordering UNE-P* services instead of the UNE-P services further taints the ROC OSS test results. Instead of observing Qwest's performance in providing UNE-P service to Eschelon and McLeod, KPMG Consulting was likely observing Qwest's performance in providing the easier-to-provision UNE-P* service. KPMG's failure to observe any true UNE-P orders where a dispatch was required completely tainted KPMG's conclusions on Qwest's ability to provide CLECs with UNE-P services when a dispatch is required. The absence of the harder-to-provision UNE-P orders from the mix of orders that KPMG Consulting observed also tainted KPMG's evaluation of Qwest's performance in provisioning services that required a dispatch.

49. While I do not have all of the secret agreements available for review from the four CLECs that were used by KPMG in the evaluation of resale and UNE-P testing, I do have several agreements from Eschelon that can be used demonstrate the ways in which test data has been corrupted. No doubt the other secret agreements have similar arrangements.

50. The single biggest problem in using Eschelon for the evaluation of preordering, ordering, maintenance and repair is that Qwest placed employees on-site at Eschelon's facility to help Eschelon with these processes. Qwest put a two person provisioning team plus a full time "coach" in Eschelon's operations center to help with all facets of Eschelon's processing of customer orders. The impact of having Qwest employees on-site, helping Eschelon with the ordering process cannot be overstated. Qwest employees provided customized analysis of

ordering issues, customized root cause analysis, and customized trouble reporting along with training on every aspect of the ordering process. The biggest advantage was the on-site presence of Qwest employees who knew the correct procedures and possessed the ability to summon unlimited support from Qwest operations centers to solve problems. This arrangement was like having a teacher available during a test to help a student answer the questions. When the student is about to make an error on a question, the teacher steps in and gives the student the correct answer. Under these circumstances I would question the value of the student's test results, not to mention the teaching method. Indeed, I would give both the student and the teacher a failing grade for cheating.

51. Eschelon also had the benefit of a detailed list of phone numbers and contacts for Qwest operations centers. Even without the Qwest employees on hand, Eschelon obviously had a direct link to the Qwest centers and people who could make things happen. This information would put Eschelon ahead of other CLECs.

52. Indications are that Covad, McLeod and Allegiance received special help from Qwest in the provisioning of service. I have not been able to review the bulk of the secret agreements Qwest executed with these CLECs. It is clear from the little I have seen that there was assistance from Qwest to these companies for the products that they were using. These would have been the same products that KPMG was testing.

53. These corrupt arrangements would have both direct and indirect impacts on the testing. The direct impact would be the availability of special methods and procedures to help the companies with preordering, ordering, provisioning, maintenance and repair of their services. The indirect impact would be in the special training that the CLECs received and the special

treatment given by Qwest employees who knew that there were special deals in place. The full impact of the direct effects on testing of the special processes and procedures that were put in place are impossible to evaluate without extensive analysis of data that I do not possess. The impact of the indirect effects on testing of special training for the companies and special treatment by Qwest employees is even more difficult to determine. Nevertheless, the potential impacts are clearly significant enough to render the test results worthless.

54. There can be no doubt from the secret agreements that are available and from the evidence provided by KPMG that the ROC testing was corrupted by Qwest's secret deals with CLECs that were part of the test. At a minimum KPMG should go back through the data, and make all the secret deals and any additional information available so that they can make a thorough analysis of the impact the secret deals had on testing. If this is not done, then the FCC will be depending on corrupted data, and an incomplete analysis of that corrupted data, when it considers whether or not to give Qwest a passing grade on this portion of Section 271.

VERIFICATION PAGE

I declare under penalty of perjury that the foregoing Declaration is true and correct.

/s/ Kenneth L. Wilson

Kenneth L. Wilson

Executed on: August 28, 2002